

DOCKET NO: HHB-CV22-6074309-S

MICHAEL SPERA, CHIEF,	:	JUDICIAL DISTRICT
POLICE DEPARTMENT,	:	OF NEW BRITAIN
TOWN OF OLD SAYBROOK;	:	
POLICE DEPARTMENT,	:	
TOWN OF OLD SAYBROOK;	:	
TOWN OF OLD SAYBROOK	:	
	:	
v.	:	
	:	
FREEDOM OF INFORMATION	:	JANUARY 6, 2023
COMMISSION AND JUSTIN HANNA	:	

PLAINTIFFS' BRIEF IN SUPPORT OF ADMINISTRATIVE APPEAL

Michael Spera, Chief, Police Department, Town of Old Saybrook; Police Department, Town of Old Saybrook; and Town of Old Saybrook (hereinafter "Old Saybrook" or collectively referred to as "Plaintiffs"), submit this brief in support of their administrative appeal of the July 20, 2022 Final Decision and order of Defendant Freedom of Information Commission (hereinafter referred to as "the Commission") in the matter of Justin Hanna v. Chief, Police Department, Town of Old Saybrook; Police Department, Town of Old Saybrook; and Town of Old Saybrook, Docket #FIC 2021-0586.

The Commission's Final Decision finding that Plaintiffs violated the Freedom of Information Act and ordering the disclosure of the requested records is affected by an error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and arbitrary. In addition, the Commission's action in adopting an amendment that resulted in the deletion of a significant finding by the

Hearing Officer was arbitrary and erroneous. Accordingly, Plaintiffs request that the Commission's Final Decision and order be reversed in its entirety for the reasons discussed below.

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Justin Hanna was employed as a police officer with the Old Saybrook Police Department ("OSPD") from July, 2018 to March, 2021. Docket Entry 111.00, Administrative Record (hereinafter "Record") at 39:12-16. Michael Spera has been the Chief of Police of OSPD since 2009 and a member of the OSPD since 1995. Id. at 71:18-19. At some point during his employment with OSPD, Mr. Hanna served as the President of the Police Union.¹ Id. at 39:20-24. As President of the Union, Mr. Hanna's duties included representing police officers and filing grievances. Id. at 40:5-9. While Union President, he was frequently in and out of Chief Spera's office communicating on certain topics. Id. at 58:2-7. The only grievance Mr. Hanna could recall filing against Chief Spera, however, pertained to overtime pay. Id. at 40:17-23.

Mr. Hanna received discipline during the course of his employment with OSPD for being late for his shift and leaving his duty weapon in the Manchester Police Department. Id. at 41: 20-22; 42:7-10). He did not file grievances over any of the discipline. Id. at 40:17-23.

Mr. Hanna gave notice that he was resigning two weeks and one day prior to his date of resignation. Id. at 44:5-10. At the time of giving notice, he told Captain DePerry, that "it was going to be a bumpy road on the way out." Id. at 55:25.

¹ The Union is the Connecticut Organization of Public Safety Employees C.O.P.S. Local #106.

OSPD has a voluntary exit interview process that gives departing employees the opportunity to provide feedback about the areas where the OSPD is good and areas where the OSPD could do better, to offer constructive criticism for improvement of OSPD, and views on overall performance of their supervisors, pay, and benefits. Record at 34:14-19; 54:23-24; 59:2-6, 11-16; 69:18-25; 70:1. Exit interviews are used to allow the OSPD to positively affect and provide constructive criticism to OSPD based on employee feedback. Id. at 59:2-5. Chief Spera used some exit interviews, with the names of employees who authored the exit interviews redacted, to prepare a report on employee turnover and retention that he reviewed with the Police Commissioners, who had requested the information and, as a body, are Chief Spera's superior. Id. at 87:7-15; 88:5-9; 89:9-24; 96:13-17.

Captain Jeffrey DePerry administered the exit interview process to Mr. Hanna. Record at 34:23-25; 60:7-9. Captain DePerry has been a member of the Old Saybrook Police Department since 1998 and a Captain since 2020. Id. at 53:18-25; 54:1. Mr. Hanna completed an exit interview assessing the supervisors in the OSPD, the pay, the benefits, the time off, and other factors that are important to employment. Id. at 34:14-19. He completed a lengthy review on Chief Spera in the exit interview, adding pages to the exit interview document. Id. at 34:20-23. He provided a harsh evaluation with his perspective and opinion on Chief Spera's performance as Chief of Police. Id. at 48:25; 49:1-2. Mr. Hanna did not file any grievances against Chief Spera for the behavior he attributed to him in his exit interview. Id. at 49:23-25; 50:1-2. While departing employees typically take 30 minutes to complete the exit interview document, Mr. Hanna spent approximately two hours completing the document. Id. at 60:2-6. In his

exit interview, Mr. Hanna claimed that Chief Spera created a hostile and toxic work environment. Id. at 60:24-25; 61:1-2. Yet, during his employment, Mr. Hanna had never made a claim that Chief Spera had created a hostile work environment. Id. at 58:12-15. Mr. Hanna also claimed in his exit interview that Chief Spera's decisions were motivated by anti-union animus even though he had never made such a claim during his employment. Id. at 58:16-17. In fact, he never approached Chief Spera during his employment and expressed concerns that Chief Spera was creating a hostile work environment or making decisions with anti-union animus. Id. at 73:4-10. Further, there has never been a finding by any administrative agency or court that Chief Spera has created a hostile work environment or that any of Chief Spera's decisions were motivated by anti-union animus. Id. at 50:16-24; 73:15-18. In addition, while Mr. Hanna claimed that he was fearful of Chief Spera and what he might do to him and for that reason he did not stand up to Chief Spera, he did not appear to be fearful of or intimidated by Chief Spera or Captain DePerry during his employment. Id. at 58:8-11. Mr. Hanna further complained in his exit interview about Chief Spera's policies, such as COVID policies that he claimed were intended to divide union members by not allowing police officers to eat together and not allowing police officers to work on reports in the same room. Id. at 62:2-25; 63:1-12. Captain DePerry explained to Mr. Hanna the reasons for such rules, specifically compliance with COVID-19 policies, but Mr. Hanna responded, "that's just the way I feel." Id. at 62:2-15. Mr. Hanna also thought that Chief Spera asked police officers to do more in different capacities outside of law enforcement than police officers were asked in other departments, even though he had not worked in any other police department but OSPD. Id. at 39:17-19; 45:13-25.

After Mr. Hanna completed the document, Captain DePerry reviewed it with Mr. Hanna and questioned him about some of his responses, pointing out factual errors and statements that he knew were not true. Record at 34:23-25; 60:7-9; 62: 2-21; 64:6-8. Mr. Hanna was not interested in Captain DePerry's attempts to correct the facts. Id. at 64:12-14.

Captain DePerry prepared a memo outlining the off-boarding process with Mr. Hanna. Record at 61:9-12. In his memo, Captain DePerry stated that Mr. Hanna's responses seemed "rehearsed," and Mr. Hanna used the term, "hostile and toxic work environment," which had appeared in a local media release from a reporter who was not friendly with the OSPD. Id. at 60:15-25; 61:1-5, 22-25. Captain DePerry concluded that Mr. Hanna's responses were intended to discredit and slander Chief Spera because his responses to questions were not typical in an exit interview, all about how Chief Spera created "an abhorrent toxic culture," and untrue statements about Chief Spera. Id. at 63:20-25; 64:1-3, 23-24; 65:1-11. Captain DePerry found Mr. Hanna was not being forthright in his responses to Captain DePerry's questions, which led Captain DePerry to believe that his written responses were not credible and he was writing them simply to slander Chief Spera. Id. at 64:23-25; 65:1-11. Captain DePerry did not tell Mr. Hanna that the exit interview would be a public record after the Police Commission reviewed it in executive session. Id. at 65:12-15). After the exit interview, Captain DePerry understood Mr. Hanna's comment about it being a "bumpy road on his way out of OSPD" to mean that he was going to go out by trying to slander Chief Spera in his exit interview. Id. at 65:16-25; 66:1-11.

Like all exit interviews, Mr. Hanna's exit interview was reviewed by Chief Spera with the Police Commissioners in Executive Session. Record at 70:9-18; 72:21-24; 88:5-9. The Police Commissioners returned their copies of Mr. Hanna's exit interview to Chief Spera after reviewing it. Id. at 72:25; 73:1-3. Exit interviews are maintained in a separate file in Chief Spera's office. Id. at 81:16; 92: 5-10.

On May 31, 2021, Mr. Hanna sent an email to First Selectman Carl Fortuna requesting copies of his personnel file and his exit interview. Record at 131. First Selectman Fortuna replied to Mr. Hanna by email of June 1, 2021 informing him that he would contact Chief Spera. Id. Mr. Hanna emailed both First Selectman Fortuna and Chief Spera on July 21, 2021 requesting a copy of his personnel file, including his exit interview and other documents. Id. at 135-136.

Chief Spera received a notice dated July 22, 2021 from First Selectman Carl Fortuna informing him that Mr. Hanna had requested a copy of his exit interview. Record at 71:20-23; 133. On July 22, 2021, Chief Spera objected to the disclosure of Mr. Hanna's exit interview on the basis that disclosure of this document would constitute an invasion of his personal privacy. Id. at 72: 7-10; 134. He found Mr. Hanna's exit interview to be filled with lies, mistruths, and hurtful statements that would be offensive to him, both personally and professionally, and his family and would have a negative impact on his current or future professional endeavors as well as undermine the OSPD and its reputation. Id. at 72:11-20; 94:2-4.

First Selectman Fortuna sent an email to Mr. Hanna on July 23, 2021 informing him that Chief Spera had filed a timely objection to the release of his exit interview, and, therefore, Old Saybrook could not release the requested records. Record at 135. On or

about October 8, 2021, Mr. Hanna filed a complaint with the Commission alleging that the Town of Old Saybrook, specifically the Police Department, denied his request for a copy of his written exit interview. Record at 1-4. On May 27, 2022, the Commission held a hearing, with Hearing Officer Attorney C. Zack Hyde presiding, on Mr. Hanna's complaint against Plaintiffs. Id. at 8-11. After the hearing, Plaintiffs submitted the exit interview for in camera inspection pursuant to the Hearing Officer's order. Id. at 137-140. Plaintiffs filed a Post Hearing Brief on June 17, 2022 arguing that the exit interview was exempt from disclosure under the Freedom of Information Act, Conn. Gen. Stat. § 1-210(b)(2). Id. at 141-153.

The Proposed Final Decision dated June 29, 2022 was transmitted to the parties on June 29, 2022. Record at 154-160. The Proposed Final Decision contained the following findings:

18. At the hearing in this matter, the respondents testified, and it is found, that exit interviews are used by the respondent police department to learn from the departing employee's experiences, improve the department's work environment going forward, and to evaluate supervisors and the department as a whole. Exit interviews are reviewed by Chief Spera, who is responsible for evaluating the performance of supervisors and other employees and by the Board of Police Commissioners, which is responsible for evaluating Chief Spera's performance. It is further found that the Police Commission reviews such exit interviews confidentially, while in executive session.

23. The Connecticut Supreme Court has long held "that when a person accepts public employment, he or she becomes a servant of and accountable to the public." Perkins, 228 Conn. at 177. In Perkins the court noted that "disclosures relating to the employees of public agencies are presumptively legitimate matters of public concern." Id. at 174. In addition the court stated "that when a person accepts public employment, he or she becomes a servant of and accountable to the public. As a result, that person's reasonable expectation of privacy is diminished. . . . The public has a right to know not only who their public employees are, but also when their public employees are and are not performing their duties." Id. at 177.

24. Based on the testimony at the hearing, it is found that the exit interview in part contains the complainant's personal impressions of Chief Spera, related to the chief's official duties and responsibilities as Chief of the Old Saybrook Police Department, and that such record therefore pertains to a legitimate matter of public concern.

25. Moreover, it is found that disclosure of the exit interview would not be highly offensive to a reasonable person.

26. With regard to the respondents' claims that disclosure of the exit interview would be defamatory and otherwise harmful to the reputation of Chief Spera, the Commission notes that although some of the information contained in the in camera records may be harmful to the chief's reputation and that of the respondent police department itself, whether or not disclosure of certain information is harmful to reputation is not the legal standard set forth in Perkins.

Record at 158-159. The Proposed Final Decision ordered: "Forthwith, the respondents shall provide a copy of the requested records to the complainant, free of charge." Id. at 160. The Proposed Final Order further ordered: "Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S." Id.

In response to the Proposed Final Decision, Plaintiffs filed a Brief on July 11, 2022 for the Commission's consideration in advance of the Commission meeting on July 13, 2022. Record at 161-169. In their Brief, Plaintiffs argued that the Hearing Officer correctly found that "some of the information contained in the in camera records may be harmful to the [police] chief's reputation and that of the respondent police department itself" and that "[e]xit interviews are reviewed by Chief Spera, who is responsible for evaluating the performance of supervisors and other employees and by the Board of Police Commissioners, which is responsible for evaluating Chief Spera's performance" and who "reviews such exit interviews confidentially, while in executive session." Record at 164-165. Plaintiffs further argued, however, that the Hearing Officer ignored the decision of the Connecticut Supreme Court in Chairman, Criminal

Justice Comm'n v. Freedom of Info. Comm'n, 217 Conn. 193, 199-200, 585 A.2d 96 (1991), a case involving analogous circumstances to the instant case and, instead, relied entirely on the case of Perkins v. Freedom of Information Commission, 228 Conn. 158 (1993) in deciding that disclosure of the exit interview did not constitute an invasion of personal privacy. Id. at 165-166. The Plaintiffs pointed out that Perkins did not overrule Chairman. Id. at 166. The Plaintiffs further highlighted that the Hearing Officer selectively quoted from Perkins with respect to the presumption that disclosures relating to employees of public employees are legitimate matters of public concern and failed to consider the next sentence in Perkins stating that the presumption is not conclusive. Id. at 166-167. The Plaintiffs also cited to the legislative intent behind the personal privacy exemption in the Freedom of Information Act found in a statement of a State representative who stated: "I believe the intent of the Committee was that if the record is kept that it shall be a public record unless the custodian feels that it would not provide reasonable protection to the character or reputation of any person." Id. at 168.

At the Commission meeting on July 13, 2022, the Hearing Officer proposed an amendment to the Proposed Final Decision to delete the portion of paragraph 26 that read: "The Commission notes that although some of the information contained in the in camera records may be harmful to the Chief's reputation and that of the Respondent Police Department itself." Record at 173:2-13. Before hearing any discussion, the Commission moved to adopt the amendment. Id. at 174:13-18; 175:5-15. Plaintiff's attorney was allowed to speak before the Commission voted on the amendment and argued that the language proposed to be removed was a finding on the key issue of whether the information would be harmful to the Chief or the police department's

reputations when deciding the personal privacy exemption. Id. at 176:20-25; 177:1-4. There was no further discussion, and the Commission unanimously passed the amendment. Id. at 178:11.

Plaintiffs' attorney was given the opportunity to be heard concerning the Proposed Final Decision. He reiterated the arguments in the Brief filed on July 11, 2022, emphasizing that under both the Perkins and Chairman cases the exit interview did not pertain to a legitimate matter of public concern and the disclosure would be highly offensive to a reasonable person because it affected the reputations of the Police Chief and the police department. Id. at 179-182. Plaintiffs' attorney also responded to a Commissioner's question about the person being protected because Mr. Hanna wrote the exit interview. Id. at 183. He explained that the exit interview attacks the Police Chief's reputation and that of the OSPD, and therefore, the Police Chief has a legitimate expectation of privacy and properly believes that disclosure would be highly offensive. Id. at 183-186. During the Commission meeting, the Hearing Officer, Attorney Hyde, responded to a question about whether he considered the Chairman case when reaching his proposed decision. Id. at 186:14-18. He stated that the instant case was not analogous to the Chairman case, which was not controlling, and the Perkins test was applied. Id. at 186:19-25; 187:1-7. Plaintiffs' attorney clarified that Perkins did not overrule Chairman and stated that the two decisions needed to be considered in conjunction when deciding the instant case. Id. at 187:12-25; 188:1-5. Despite the objection of the Plaintiffs, the Commission unanimously adopted the amended Hearing

Officer's Report. Id. at 194:23-25; 195:1-13. The Commission's Final Decision dated July 13, 2022 was sent to the parties on July 20, 2022, and this appeal followed. Record at 197-204.

II. STANDARD OF REVIEW

The Uniform Administrative Procedure Act ("UAPA") governs appeals from the decision of the Commission. Glastonbury Volunteer Ambulance Ass'n v. Freedom of Information Comm'n, 227 Conn. 848, 851, 633 A.2d 305 (1993). The UAPA provides that "[a] person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court." Conn. Gen. Stat. § 4-183(a). The UAPA further provides that "[t]he court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Conn. Gen. Stat. § 4-183(j). If the court finds that rights have been prejudiced, "it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings." Conn. Gen. Stat. § 4-183(j).

"Review of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are

reasonable. . . . Neither this court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." Murphy v. Commissioner of Motor Vehicles, 254 Conn. 333, 343, 757 A.2d 561 (2000) (citations and internal quotation marks omitted).

III. ARGUMENT

A. Plaintiffs Have Exhausted Administrative Remedies and Are Aggrieved

"[T]he Superior Court has jurisdiction only over appeals from a 'final decision' of an administrative agency." Town of Fairfield v. Connecticut Siting Council, 238 Conn. 361, 369, 679 A.2d 354 (1996). A plaintiff satisfies the exhaustion requirement under the UAPA when it appeals from the final decision of the Commission, and it has no further remedy within the agency. Fromer v. Freedom of Info. Comm'n, No. CV030521936, 2004 Conn. Super. LEXIS 2036, at *8 (New Britain Super. Ct., July 27, 2004, Owens, J.), aff'd, 90 Conn. App. 101, 875 A.2d 590 (2005). Here, the transmittal of the Commission's Final Decision dated July 13, 2022 stated: "This will serve as notice of the Final Decision of the Freedom of Information Commission in the above matter as provided by §4-183(c), G.S." Record at 197. Consequently, Plaintiffs are appealing from the Commission's Final Decision dated July 13, 2022 and have exhausted all remedies at the Commission.

In addition, Plaintiff has satisfied the two-prong test for aggrievement, which requires the party claiming aggrievement to "demonstrate a specific personal and legal interest in the subject matter of the decision" and to "establish that the specific personal

and legal interest has been specially and injuriously affected by the decision.” In re Shawn S., 262 Conn. 155, 165, 810 A.2d 799 (2002) (internal quotation marks and citation omitted). Plaintiffs contend, and the evidence shows, that the requested record at issue here, the exit interview, contains information that, if disclosed, would constitute an invasion of Chief Spera’s personal privacy under Conn. Gen. Stat. § 1-210(b). As found by the Hearing Officer, “exit interviews are used by the respondent police department to learn from the departing employee’s experiences, improve the department’s work environment going forward, and to evaluate supervisors and the department as a whole.” Record at 158 (¶ 18). The Hearing Officer further found that the exit interview contains Mr. Hanna’s negative comments and opinions regarding Chief Spera as well as his alleged negative experiences during his employment with the OSPD. Record at 158 (¶ 19). He also noted that “some of the information contained in the camera records [the exit interview] may be harmful to the chief’s reputation and that of the respondent police department itself.” Record at 159 (¶ 26). Thus, Plaintiffs have a specific personal and legal interest in the subject matter of the decision. In addition, the Commission found that Plaintiffs violated Conn. Gen. Stat. §§ 1-210(a) and 1-212(a) by not providing the exit interview to Mr. Hanna and further issued an order that Plaintiffs provide a copy of the requested records to Mr. Hanna, free of charge and “strictly comply with §§1-201(a) and 1-212(a), G.S.” Record at 202-203. Plaintiffs have been injured by this decision and the Commission’s orders when the exit interview is exempt from disclosure as supported by the administrative records. Thus, Plaintiffs believe that the Commission has ordered them to take actions that are unwarranted under the applicable law. Consequently, Plaintiffs have demonstrated aggrievement to

justify consideration of their appeal of the Commission's Final Decision. See Town of Avon v. Freedom of Information Comm'n, No. HHBCV196056393, 2020 Conn. Super. LEXIS 893 at *2 (New Britain Super. Ct., Aug. 6, 2020, Cordani, J.), appeal dismissed, 210 Conn. App. 225, 269 A.3d 852 (2022) ("The plaintiffs are aggrieved because they have exhausted their administrative remedies, and appeal a final decision of the Commission finding that they violated FOIA and ordering compliance, including ordering the plaintiffs to take actions that the plaintiffs believe are unwarranted under the applicable law.").

B. The Commission's Final Decision is Affected by an Error of Law, Clearly Erroneous, and Arbitrary

The Commission's Final Decision finding that the exit interview was not exempt from disclosure under Section 1-210(b) of the Freedom of Information Act was affected by an error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and arbitrary.

Under the Connecticut Freedom of Information Act, Mr. Hanna's exit interview is exempt from disclosure because the exit interview consists of information that, if disclosed, would constitute an invasion of Chief Spera's personal privacy. Section 1-210(b) of the Connecticut Freedom of Information Act states in relevant part: Nothing in the Freedom of Information Act shall be construed to require disclosure of: . . . (2) Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy." In Perkins v. Freedom of Info. Comm'n, 228 Conn. 158, 168, 635 A.2d 783 (1993), the Connecticut Supreme Court set forth the burden of proof required for an exemption under Conn. Gen. Stat. § 1-210(b)(2). "First, [the party claiming exemption] must establish that the files in question are within the categories of

files protected by the exemption, that is, personnel, medical or similar files. Second [the party claiming exemption] must show that the disclosure of the records would constitute an invasion of personal privacy.” Perkins, 228 Conn. at 168 (internal quotation marks omitted; citation omitted).

The evidence shows, and the Commission properly found, that the exit interview is a similar file protected by Conn. Gen. Stat. § 1-210(b)(2) because it contains a departing employee's feedback on his job and views on his supervisors, including the Chief of Police, and is used in evaluating the performance of the OSPD as well as OSPD supervisors, including the Chief of Police. Record at 201 (¶¶ 17-20). The Commission, however, erroneously found that the disclosure of the exit interview does not constitute an invasion of personal privacy.

The Connecticut Supreme Court held that the test for determining whether the disclosure of information constitutes an invasion of personal privacy is two-fold: (1) “the information sought by a request does not pertain to legitimate matters of public concern” and (2) the disclosure of the information “is highly offensive to a reasonable person.” Perkins, 228 Conn. at 175. Based on the substantial evidence in the record, the Freedom of Information Act, and relevant case law, the exit interview does not pertain to a legitimate matter of public concern. In finding that the exit interview pertains to a legitimate matter of public concern, the Commission relied on only a portion of the Connecticut Supreme Court's decision in Perkins. In the Commission's Final Decision, the Commission selectively quoted from Perkins in stating: “disclosures relating to the employees of public agencies are presumptively legitimate matters of public concern.” Records at 202 (¶ 23) (quoting Perkins, 217 Conn. at 174). The Commission

erroneously and arbitrarily ignored the very next sentence in Perkins in which the Court stated, “[t]hat presumption is not, however, conclusive.” Perkins, 217 Conn. at 174. Indeed, the Connecticut Supreme Court acknowledged in Chairman v. Freedom of Information Comm’n, 217 Conn. 193, 199, 585 A.2d 96 (1991) that “government officials have a legitimate interest in preserving the secrecy of matters that conceivably could subject them to annoyance or harassment in either their official or private lives.” (internal quotation marks and citation omitted). The Commission further erroneously and arbitrarily ignored the Connecticut Supreme Court’s holding in Chairman, as acknowledged in Perkins, “that the disclosure of internal, departmental, personnel evaluations would constitute an invasion of privacy in part because the evaluations were conducted under appropriate confidential circumstances with the employees, thereby making such reports matters that do not legitimately concern the public.” Perkins, 228 Conn. at 174. In Chairman, the Court found that a state’s attorney had a reasonable expectation of privacy in his personnel evaluation created by the chief state’s attorney where the personnel evaluation was for the “eyes only” of a limited group, specifically the criminal justice commission, and members of that commission destroyed their copies of the evaluation after the commission meeting. Chairman, 217 Conn. at 199-200. As in Chairman, Chief Spera had a reasonable expectation of privacy in the information contained in the exit interview, as the record shows that the exit interview was reviewed by only a limited number of individuals, Chief Spera, Captain DePerry, and the Police Commissioners. Record at 34:23-25; 60:7-9; 72:12-13, 21-24. In addition, Chief Spera maintained that reasonable expectation of privacy when he

reviewed the exit interview in Executive Session, not in public, with the Police Commissioners, who returned their copies of the exit interview to Chief Spera after reviewing it. Record at 72:25; 73:1-3.

Indeed, in the Commission's Final Decision, the Commission made the following findings:

18. At the hearing in this matter, the respondents testified, and it is found, that exit interviews are used by the respondent police department to learn from the departing employee's experiences, improve the department's work environment going forward, and to evaluate supervisors and the department as a whole. Exit interviews are reviewed by Chief Spera, who is responsible for evaluating the performance of supervisors and other employees and by the Board of Police Commissioners, which is responsible for evaluating Chief Spera's performance. It is further found that the Police Commission reviews such exit interviews confidentially, while in executive session.

20. Based upon the testimony described in paragraphs 18 and 19 above, and upon careful in camera inspection, it is found that a principle purpose of the exit interview is evaluation of superiors and employees, including the chief, and that therefore, it is a "personnel" or similar" file within the meaning of §1-210(b)(2), G.S.

Record at 202. Based on Chairman and the substantial evidence in the record as found by the Commission, the exit interview is not a legitimate matter of public concern because the exit interview is a document used to evaluate Chief Spera's performance and a reasonable expectation of privacy was maintained when it was reviewed confidentially in executive session by the Police Commissioners, who are responsible for evaluating Chief Spera's performance. See also First Selectman of Ridgefield v. Freedom of Information Comm'n, 60 Conn. App. 64, 67, 758 A.2d 429, cert. denied, 255 Conn. 922 (2000) (personnel evaluations of Town employees "were conducted in confidential circumstances that made them 'not legitimate subjects of public interest'").

The Commission arbitrarily ignored the Chairman decision, and, accordingly, the Commission's finding that the exit interview pertains to a legitimate matter of public concern was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

As for the second part of the Perkins test for determining whether the disclosure of information constitutes an invasion of personal privacy, the substantial evidence in the record and the law support a finding that the disclosure of the exit interview would be highly offensive to a reasonable person. The Commission erroneously found that "whether or not disclosure of certain information is harmful to reputation is not the legal standard set forth in Perkins." Record at 4 (¶ 26). In fact, the Connecticut Supreme Court in Perkins did not exclude the consideration of harm to reputation in holding that the disclosure of the information must be highly offensive to a reasonable person to constitute an invasion of personal privacy. To the contrary, the Connecticut Supreme Court in Perkins quoted the following statement of a legislator expressing the legislative intent of the exemption: "I believe the intent of the Committee was that if the record is kept that it shall be a public record unless the custodian feels that it would not provide reasonable protection to the character or reputation of any person." Perkins, 228 Conn. at 169 n.13 (emphasis added). In addition, the Court cited its holding in Chairman in support of its articulation of the standard for the invasion of personal privacy exemption. Id. at 174. In Chairman, the Connecticut Supreme Court held that the personnel evaluation of the state's attorney was exempt from disclosure because he had a reasonable expectation of privacy in the information contained in the personnel evaluation that described such personal matters as his aptitude, attitude, basic

competence, trustworthiness, ethics, and interpersonal relationships, and disclosure “would carry significant potential for embarrassment.” Chairman, 217 Conn. at 199-200. Rather than consider the Supreme Court’s holding in the Chairman case and the intent of the legislature, the Commission erroneously relied entirely on Perkins in deciding that disclosure of the exit interview would not be highly offensive to a reasonable person. Record at 202 (¶ 26). The Connecticut Supreme Court, however, did not overrule Chairman when it issued the Perkins decision two (2) years later.

Moreover, the Connecticut Appellate Court has considered Chairman when applying the standard enunciated in Perkins. In First Selectman of Ridgefield v. Freedom of Information Comm’n, 60 Conn. App. 64, 68, 758 A.2d 429, cert. denied, 255 Conn. 922 (2000), the Connecticut Appellate Court found that personnel evaluations were not exempt from disclosure under the personal privacy exemption because the plaintiffs did not present evidence demonstrating that the disclosure of the evaluations would be highly offensive to a reasonable person and conceded that there was nothing in the evaluations that was embarrassing or humiliating.

Here, Mr. Hanna testified that he provided a harsh evaluation with his perspective and opinion on Chief Spera’s performance as Chief of Police, which included matters that “were very disgruntling to him,” such as Chief Spera’s comments that he “found alarming.” Record at 46:21-25; 48:25; 49:1-2. Mr. Hanna admitted during the hearing that he thought that Chief Spera was controlling and demanded more of police officers in different capacities outside of law enforcement than police officers in other departments, even though he had not worked in any other police departments. Id. at 45:9-25. He testified that he had hard feelings as to how things were being

conducted by Chief Spera and thought that management was very poor. Id. at 45:4-6. Mr. Hanna claimed that Chief Spera created a hostile and toxic work environment. Id. at 60:24-25; 61:1-2.

Mr. Hanna admitted that, during his employment, he did not give Chief Spera notice of his concerns about Chief Spera's alleged conduct as described in his exit interview or give Chief Spera an opportunity to respond to his concerns. Record at 50:12-15. Both Captain DePerry and Chief Spera confirmed that, prior to his resignation, Mr. Hanna never claimed that Chief Spera had created a hostile work environment or made decisions with anti-union animus. Id. at 58:12-18; 73:3-10. Mr. Hanna also admitted that, to his knowledge, there has never been a finding by any agency that Chief Spera has created a hostile work environment or that Chief Spera acted with anti-union animus, which Chief Spera confirmed during his testimony. Id. at 50:16-24; 73:11-18. Mr. Hanna further admitted that, in his role as President of the Union, he did not file any grievances against Chief Spera for any of the alleged behaviors that he attributes to him in his exit interview. Id. at 49:23-25; 50:1-2. He also admitted that, outside of being denied a union representative in a meeting, he did not object to any of the conduct that he attributes to Chief Spera in his exit interview by telling Chief Spera that he thought his conduct was offensive or inappropriate. Id. at 50:3-11.

Captain DePerry testified that Mr. Hanna's responses to questions were not typical in an exit interview, all about how Chief Spera created "an abhorrent toxic culture," and untrue statements about Chief Spera. Id. at 63:20-25; 64:1-3, 23-24; 65:1-11. Captain DePerry found that Mr. Hanna was not being forthright in his responses to

Captain DePerry's questions, which led Captain DePerry to believe that his written responses were not credible and he was writing them simply to slander Chief Spera. Id. at 64:23-25; 65: 1-11

Significantly, Mr. Hanna conceded that his allegations about Chief Spera in his exit interview are just his opinions, not based on any facts found by anyone, including an administrative agency or court. Record at 46:21-23; 48:25; 49:1-2; 50:16-24; 73:15-18. His unsupported opinions about Chief Spera relate to Chief Spera's personal characteristics, such as his aptitude, attitude, basic competence, trustworthiness, ethics, and interpersonal relationships. The disclosure of such information would be embarrassing and humiliating in both Chief Spera's professional life and personal life and have a negative impact on his current or future professional endeavors as well as undermine the OSPD and its reputation. Record at 72:11-20; 94:2-4. Indeed, the Hearing Officer found that "some of the information contained in the in camera records may be harmful to the chief's reputation and that of the respondent police department itself." Record at 159 (¶ 26). The Hearing Officer proposed to amend the Proposed Final Decision by deleting this finding only after Plaintiffs submitted a brief in response to the Proposed Final Decision in which Plaintiffs argued the significance of this finding. Record at 162-169; 173:2-13. The Commission adopted the amendment to delete the finding. Id. at 178:11. The Commission's action in doing so was arbitrary and erroneous, as this language pertains to the core issue in deciding the invasion of personal privacy exemption under the Freedom of Information Act.

Based on the Connecticut Supreme Court's holdings in Perkins and Chairman and the legislative intent of the personal privacy exemption, the substantial evidence in the record supports a finding that the disclosure of the exit interview would be highly offensive to a reasonable person due to the nature of Mr. Hanna's negative comments and, therefore, an invasion of Chief Spera's personal privacy. As such, the exit interview is exempt from disclosure under Conn. Gen. Stat. § 1-210(b)(2). The Commission erred by not applying both Perkins and Chairman and failing to consider the legislative intent of the Freedom of Information Act when determining whether the exit interview was exempt from disclosure under Conn. Gen. Stat. § 1-210(b), particularly where the facts in this case are similar to the facts in the Chairman case. Accordingly, the Commission's Final Decision is affected by an error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and must be reversed.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this appeal be sustained and the Commission's Final Decision of July 13, 2022 be reversed.

Respectfully submitted,
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CERTIFICATE OF SERVICE

This is to certify that on this 6th day of January, 2023, a copy of the foregoing
was sent as follows:

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